



FEDERAL TRANSIT ADMINISTRATION

FTA Supplemental Fiscal Year 2013 Apportionments, Allocations, and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; Request for Comments on State Safety Oversight Apportionment.

SUMMARY: On October 16, 2012 the Federal Transit Administration (FTA) published in the *Federal Register* a Notice of FTA Transit Program Changes, Authorized Funding Levels, Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Fiscal Year (FY) 2013 Apportionments, Allocations and Interim Guidance. The initial Notice apportioned and allocated funding pursuant to the Continuing Appropriations Resolution, 2013 (CR) that provided funds through March 27, 2013. This subsequent FY 2013 Apportionment Notice apportions the full FY 2013 funding available pursuant to the Consolidated and Further Continuing Appropriations Act, 2013 (FY 2013 Appropriations) and sequestration of funds triggered by the Balanced Budget and Emergency Deficit Control Act of 2011. This notice also provides and seeks comment on an illustrative apportionment for the State Safety Oversight (SSO) grant program and provides information on FTA's discretionary programs and forthcoming program guidance.

DATES: Comments on the SSO Grant Program must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.] Late-filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Jamie Pfister, Director, Office of Transit Programs, at (202) 366-2053 or email, Jamie.Pfister@dot.gov. Please contact the appropriate FTA regional office for any specific requests for information or technical assistance. A list of FTA regional offices and contact information is available on the FTA website under the heading “Regional Offices” at <http://www.fta.dot.gov>.

For SSO Grant Program information, please contact Rick Gerhart, Acting Director, Office of Safety, 1200 New Jersey Ave, SE., Washington, DC 20590, phone (202) 366-8970, or email, Richard.Gerhart@dot.gov.

ADDRESSES: Comments are limited to the SSO Grant Program and should be submitted by one of the methods, identifying your submissions by docket number FTA-2013-0022:

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. Fax: (202) 493-2251.
3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2013-0022. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions

received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

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A. Overview

On October 1, 2012, MAP-21 (Pub. L. 112-141) authorized FTA's Public Transportation Assistance Programs for FYs 2013-2014. On October 16, 2012, FTA published an apportionments notice that apportioned the FY 2013 formula funds in an amount of approximately one-half of the FY 2012 funding level among potential program recipients pursuant to both the authorization statute and the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175). (See 77 FR 63670). A copy of the October 16, 2012 notice and accompanying tables can be found on the FTA website at <http://www.fta.dot.gov/apportionments>. This notice apportions funds based on the Consolidated and Further Continuing Appropriations Act, 2013 (FY 2013 Appropriations) (Pub. L. 113-6), which provides funds for the full fiscal year, and as applicable, reflects sequestration triggered by the Balanced Budget and Emergency Deficit Control Act of 2011. For FTA's formula programs, the FY 2013 Appropriations provides obligation limitation authority of \$8.461 billion, \$17 million less than the contract authority provided by MAP-21 in FY 2013, due to a 0.2 percent across-the board rescission mandated by the FY 2013 full-year Appropriations Act. These funds were not subject to sequestration. The FY 2013 Appropriations also provides \$142 million in FY 2013 for grants to the Washington Metropolitan Area Transportation Authority; \$1.855 billion for the Capital Investment Grant Program; and \$41.7 million for the Research Programs after sequestration and a 0.2 percent across-the board rescission. In addition, this notice includes the State Safety Oversight (SSO) grant program's illustrative apportionments. FTA is seeking comment on the proposed

methodology for apportioning SSO funds. It also provides additional funding information for FTA's FY 2013 discretionary programs, including the FY 2013 Capital Investment Grant (CIG) allocations.

B. FY 2013 Available Funding for FTA Programs

1. Funding Based on the Consolidated and Further Continuing Appropriations Act, 2013

The FY 2013 Appropriations Act provides \$10.597 billion for FTA programs and administrative expenses in FY 2013, of which \$8.461 billion is the obligation limitation available for formula programs after subtraction of an across-the-board rescission of 0.2 percent required by the appropriations act. FTA's obligation limitation is derived from the Mass Transit Account of the Highway Trust Fund and is exempt from sequestration triggered by the Balanced Budget and Emergency Deficit Control Act of 2011.

However, sequestration and 0.2 percent across-the-board rescission required by P.L. 113-6 further reduces discretionary budget authority in FY 2013 for programs funded from the General Fund of the United States Treasury by approximately 5 percent. This resulted in a \$100.0 million reduction in Fixed Guideway Capital Investment Grants (CIG); a \$2.3 million reduction in Research Program funds; and a \$544.7 million reduction in Public Transportation Emergency Relief Program funds.¹ The specific amounts available for the CIG Program and the Research Programs are discussed in Section C below.

In order to conduct program oversight activities in accordance with 49 U.S.C. 5338(i), 0.5 percent is set aside from the amounts available to carry out the Planning Programs (section

¹ MAP-21 authorized a new Public Transportation Emergency Relief Program beginning in FY 2013. The Disaster Relief Appropriations Act, 2013, (Pub. L. 113-2) provided appropriations for that program for the purpose of funding emergency response and recovery activities in the wake of Hurricane Sandy.

5305); the Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program (section 5310); and the Rural Areas Formula Grants Program (section 5311). In addition, 0.75 percent is set aside from amounts made available to carry out the Urbanized Area Formula Grants Programs, and the High Intensity Fixed Guideway State of Good Repair Formula Program (section 5337(c)). Additionally, one percent of the amounts made available to carry out the CIG Program (section 5309) is set aside for oversight activities.

2. FY 2013 Formula Apportionments

FTA is publishing apportionment tables on its website for each program that reflects the full year less the sequestration reductions, across-the-board rescissions and oversight take-downs, as applicable. FTA is continuing to use, as it did in the partial year apportionments published in October, urbanized area and demographic data from the 2010 Census. Tables displaying the funds available to eligible states, tribes, and urbanized areas have been posted on FTA's website at <http://www.fta.dot.gov/apportionments>. Additional information about the specific Census data used in FTA's full year formula apportionments will be posted to FTA's website.

Two new formula program apportionment tables are included that previously were not available in the partial year notice. The first is the Tribal Transit Formula Program apportionments (Table 10). The full-year Tribal Transit apportionments are available for obligation. A separate *Federal Register* notice is expected to be published on May 9, 2013 that responds to comments received, provides more guidance on the Tribal Transit Program, and solicits proposals for the FY 2013 Tribal Transit Discretionary program.

The second is the illustrative State Safety Oversight (SSO) apportionments (Table 13). For FTA's SSO program under its new safety authority (section 5329), \$21,945,771 (0.5 percent

take-down of the amount available for urbanized areas (UZAs) under section 5307) is available for apportionment. This amount will be apportioned according to a formula for SSO grants as determined by FTA. FTA is soliciting comments on the proposed formula in response to this notice. Specific questions on which FTA is soliciting comment can be found in Section III.B.iii of this notice. These funds will be available for obligation once the final formula is established to apportion them. FTA will respond to comments and publish the final formula allocations in a subsequent notice.

In addition, FTA updated Table 3A, “Section 5307 Operating Assistance Special Rule Operator Caps,” for the systems in large urbanized areas. The calculation of the operating assistance caps in Table 3-A has been updated to include additional information received since the original table was published. First, additional qualifying agencies have been identified based on fixed route bus service that was not previously included in the calculations. Second, FTA is attributing vehicle revenue hours reported by private transit operators that receive funding from an eligible FTA grantee toward the calculation of an operating cap for the relevant grantee. Third, FTA has refined the availability and allocation of formerly rural public transportation service within the new 2010 Census urbanized area boundaries, resulting in modifications to the overall service data used in the calculations of operating caps. This may increase or decrease the share of a UZA’s vehicle revenue hours attributed to a particular agency. For questions about these calculations, contact Adam Schildge at adam.schildge@dot.gov.

3. FY 2013 Discretionary Program Funds

i. Notices of Funding Availability

Pursuant to the information published in the October 16 *Federal Register* notice, MAP-21 authorized several discretionary grant programs, such as the Transit-Oriented Development (TOD) Planning Pilot Program, Low or No Emissions Bus and Facilities Program, Tribal Transit Discretionary Program, and Passenger Ferry Program. FTA will publish individual Notices of Funding Availability (NOFAs) for these programs in the coming months now that the full-year appropriations are available. NOFAs will be posted in Grants.Gov and on FTA's website once published in the *Federal Register*.

ii. Research Program Funding

After taking into consideration sequestration and the 0.2 percent across-the board rescission, the FY 2013 Appropriations provides approximately \$41.7 million for Research program activities of which \$33.2 million are available to carry out Research, Development, Demonstration, and Development projects under 49 U.S.C. 5312, as amended by MAP-21.

iii. FY 2013 Fixed Guideway Capital Investment Grant Program Allocations

The Fixed Guideway Capital Investment Grant (CIG) Program (49 U.S.C 5309), which historically authorizes the New and Small Starts Programs and now includes the Core Capacity Improvement Program, is excluded from the NOFA process because the program has an ongoing project development and review process, and funding is allocated consistent with information already available to FTA. By way of this notice, however, FTA is publishing the FY 2013 CIG Allocations table (Table 7) to its website. Subsequent to sequestration and the 0.2 percent across-the-board rescission and after the oversight take-down, \$1.836 billion is available for the CIG Program. These allocations were also published in the FY 2014 Annual Report on Funding

Recommendations CIG Program (formerly referred to as the Annual New Starts Report) on April 12, 2013.

iv. Washington Metropolitan Area Transportation Authority (WMATA) Allocation

FY 2013 Appropriations also provides a discretionary allocation of \$142.2 million in FY 2013 for grants to the Washington Metropolitan Area Transportation Authority after taking into consideration sequestration and the 0.2 percent across-the board rescission.

v. FY 2012 Transit in the Parks Allocations

FTA also recently posted a revised FY 2012 Transit in the Parks discretionary allocation table to its website (www.fta.dot.gov/apportionments) to correct the table printed in the *Federal Register* on February 18, 2013, which inadvertently left off selected projects.

C. State Safety Oversight (SSO) Program

1. Available Funding

Section 5336(h)(4) of 49, U.S.C., provides that 0.5 percent of amounts made available to provide financial assistance for urbanized areas under 49 U.S.C. 5307 shall be apportioned to eligible States under the FTA SSO Program. Therefore, \$21,945,771 is available to be used by eligible States to develop or carry out SSO program activities described in 49 U.S.C. 5329(e). Grant funds may be used for program operational and administrative expenses, including employee training activities.

2. Proposed Formula Apportionment

Congress directed FTA to develop a formula to apportion the SSO Program funds to States that takes into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway public transportation systems (operator) not subject to regulation by the Federal Railroad Administration (FRA) within each eligible State.

i. Proposed Tiers

The proposed formula incorporates these service measures in a “Service Tier” and also includes the use of two other tiers, a “Base Tier” and an “Oversight Complexity Tier.” FTA proposes to apportion the majority of funds, sixty percent (60%), through the Service Tier: fifteen percent (15%) based on vehicle passenger miles (PMT), fifteen percent (15%) based on vehicle revenue miles (VRM), and thirty percent (30%) based on directional route miles (DRM) for rail modes not regulated by FRA as reported to the National Transit Database (NTD). The proposed Base Tier allocates twenty percent (20%) of program funding equally among the eligible States and is designed to ensure that each eligible State receives a minimum funding level for its SSO program. FTA proposes to apportion the remaining twenty percent (20%) of funds through an Oversight Complexity Tier, which reflects the additional oversight activities and technical complexity associated with overseeing each distinct rail mode at each operator. The proposed Oversight Complexity Tier measure is the number of rail modes (e.g., light rail, heavy rail, etc.) not regulated by the FRA as reported to the NTD or in the engineering or construction phase of development by each operator.

Additionally, FTA proposes to apply a fifteen percent cap to each Service Tier factor to ensure a fair and equitable distribution of funds so that no State receives more than fifteen percent of the funds available for any Service Tier factor.

A flow chart to explain the illustrative formula is available here:

http://www.fta.dot.gov/12853_14910.html. Additionally, the following table depicts the basic tier structure and the amounts apportioned through each factor.

Table 1: Proposed Formula Factors and Percent Apportioned through each Factor.

<u>Service Tier Factors (60%)¹</u>	<u>Base Tier Factor (20%)</u>	<u>Oversight Complexity Tier Factor (20%)</u>
PMT Factor (15%) VRM Factor (15%) DRM Factor (30%) as reported to the NTD	Equal amount per eligible State	Number of Rail Modes at each Rail Fixed Guideway Public Transportation System not regulated by FRA as reported to the NTD or in the engineering or construction phase of development.

¹ FTA proposes a 15 percent cap on each factor within the Service Tier.

ii. Proposed Apportionments to Oversee Multi-State Rail Fixed Guideway Public Transportation Systems (Operators)

Where an operator serves multiple States, FTA proposes that the funding be apportioned to the eligible State where the operator is headquartered. The amount apportioned to each eligible State in the Base Tier, however, would be unaffected by multi-state operators. The eligible State to which funds are apportioned would be responsible for carrying out the grant program responsibilities. States served by the multi-state operator are expected to support the oversight

program as specified in the States' existing local funding and oversight agreement, which is necessary to support the local match requirements and other needs of the served States.

The proposed approach would reduce the number of grant agreements, lessen the eligible States' grant administration burden, ensure all Federally-funded SSO program activities are in one grant and eliminate the possibility of duplication. FTA seeks comment on this approach.

iii. Soliciting Comments

In establishing the SSO Program, FTA is proposing to use a formula to allocate the funds to eligible States as described in the preceding sections. While the proposed formula is primarily driven by the Service Tier factors, it also seeks to support even the smallest SSO programs. The proposed formula also recognizes that both the number of operators and the number of rail modes affects SSO Program activity and technical capability demands. As such, FTA seeks comment on the following six questions:

- a. Should FTA include a Base Tier Factor, and is this share appropriate?
- b. Should FTA include an Oversight Complexity Tier Factor as presented?
- c. Should FTA include rail fixed guideway public transportation systems in the engineering or construction phase of development in the Oversight Complexity Tier?
- d. Are the Service Tier factors appropriately weighted?
- e. Should FTA include a 15 percent cap on each Service Tier factor, and are they weighted appropriately?
- f. Should FTA apportion multi-state operator funding to the eligible State in which the operator is headquartered?

Instructions for submitting comments to the FTA docket for the SSO program illustrative apportionment are found in the beginning of this notice in the “Addresses” section. Comments must be filed by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

3. Steps to Enhance Readiness for SSO Grant Application and Certification Processes

There are steps that the eligible States and existing State Safety Oversight Agencies (SSOAs) should take to enhance their readiness for the forthcoming grant application and certification processes. FTA strongly encourages eligible States and existing SSOAs begin this process now. To support eligible States and SSOAs in this process, FTA offers the following recommendations:

- Identify State grant recipient: FTA must make SSO program grants to eligible States. Governors will need to identify the State agency that will be the recipient for these program funds. This will be accomplished through a letter to the appropriate FTA Regional Administrator. A listing of FTA Regional Offices and full contact information is available at <http://www.fta.dot.gov/>.
- Coordinate with the FTA Regional Office: If the identified grant recipient is not an existing FTA recipient, it will be necessary for the identified grant recipient to work with the appropriate FTA Regional Office to be established as a new FTA recipient. The FTA Regional Office will identify the specific activities necessary to become established as an FTA recipient. If the identified grant recipient is an existing FTA recipient, the existing recipient should also coordinate with the FTA Regional Office to determine if any additional information or activities are required in relation to the new SSO grant program.

- Identify sufficient and appropriate matching funds: Eligible States are required to provide a twenty percent (20%) match for FTA-funded SSO program activities. While the formula provided in this notice is merely illustrative, each eligible State should be prepared to identify its matching funds. Federal funds, funds received from a public transportation agency, and revenues earned by a public transportation agency may not be used to satisfy this match.
- Complete FTA's Self-Assessment and Gap Analysis Form: To help eligible States identify the activities necessary to meet MAP-21 statutory requirements, FTA has prepared a self-assessment and gap analysis form, which is available on FTA's website at <http://www.fta.dot.gov/tso.html>. While completion of this form is currently optional, FTA strongly urges each eligible State to complete and upload the form and any supporting materials to the link posted on FTA's website. This information will assist FTA and the eligible State to identify issues to be resolved through the 49 U.S.C. 5329(e)(7)(A) certification process. The gaps identified will assist the eligible State and/or existing SSOA to develop a preliminary plan with strategies for achieving a clear and workable transition to meeting the new SSO Program requirements. FTA will review these plans and make grants that support each State's transitional and existing SSOA activities. The plan will need to demonstrate how the State will meet statutory requirements, including those related to adequate staffing and technical capabilities, as well as the safety enforcement authority and legal and financial independence of the SSOAs. FTA's grant application process will require States to identify completion milestones and a project budget for each grant activity. As such, FTA strongly

encourages eligible States and existing SSOAs to begin to identify likely timeframes and budgets for these transitional activities.

4. Certification of State Safety Oversight (SSO) Programs

As required by MAP-21 and as part of FTA's new safety authority, FTA must determine by October 1, 2013 whether each SSO Program is in compliance with the statutory requirements for oversight of the rail fixed guideway public transportation systems within that eligible State, and whether that eligible State's program "is adequate to promote the purposes of safety in public transportation." See 49 U.S.C. 5329(e)(7)(A). FTA must issue a certification for the eligible State's program or if the program is not adequate, FTA must issue a denial of certification for the eligible State's program. If FTA issues a denial of certification, FTA must explain in writing the reasons and allow the eligible State an opportunity to modify and resubmit its program for certification. See 49 U.S.C. 5329(e)(7)(B), (C).

The grant award and certification processes are considered separate and distinct from each other. While grants may be awarded prior to certification to support initial development and implementation of enhanced SSO programs, States will need to provide explicit transition plans that include milestones to receive these funds.

To continue to receive future SSO program funding, States will need to demonstrate satisfactory progress towards meeting MAP-21 requirements as described in their own transition plans. FTA will issue or deny certification based on a rigorous review of progress made on the SSO transition milestones. FTA plans to work individually with each eligible State on the preparation of adequate transition plans which must be completed to receive grant funding.

An SSOA currently in compliance with FTA's regulations at 49 C.F.R. Part 659 may use its existing SSO Plan as a basis for seeking an FTA certification of an eligible State's program.

However, it is the sole prerogative of FTA to determine whether that plan will suffice for purposes of meeting the new and more stringent requirements of 49 U.S.C. 5329(e). Although an existing SSOA may be the most likely agency to be chosen to meet the new statutory requirements, an eligible State may choose to create a new agency, or make other arrangements, for purposes of strengthening its oversight of rail public transportation systems and complying with the requirements of MAP-21. These possibilities will be the subject of discussion between FTA and each of the eligible States obliged to comply with 49 U.S.C. 5329(e).

D. FTA Program Guidance and Requirements FY 2013

As a result of the MAP-21 authorization and in addition to regulatory activities, FTA is in the process of updating program circulars to reflect MAP-21 changes and provide guidance for new and existing programs. Below is a chart of expected publication dates for the program circulars. FTA will be publishing the circulars for notice and comment, with final publication expected by the beginning of FY 2014. In the interim, existing program circulars combined with the interim guidance in the October 16, 2012 apportionment notice can be used to administer the programs. FTA's electronic grant management system and financial systems have both been updated to reflect new programs and new codes provided by MAP-21. If there are additional questions about the major formula programs or grants, please contact your regional office.

<u>Program</u>	<u>Expected Publication Date</u> <u>(for Notice and Comment)</u>
Urbanized Area Formula Grant Program (Section 5307)	<i>April 22, 2013 (actual)</i>

Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310)	Spring 2013
Rural Areas Formula Program (Section 5311)	Spring 2013
State of Good Repair Formula Program (Section 5337)	Summer 2013
Bus and Bus Facilities Formula Program (Section 5339)	Summer 2013

E. Corrections

In the October 16, 2012 *Federal Register*, there was a typo in the State of Good Repair (49 U.S.C. 5337) program-specific section (*section IV, “Program Specific Information, P. 3. Basis for Formula Apportionment”*) regarding how FTA intended to apportion funds for this program. The section accidentally included a reference to 5339. The corrected sentence should read:

“...FTA will apportion section 5337 funds ~~to the section 5307~~
Designated Recipient for the UZA) with fixed guideway transportation systems operating at least 7 years.”

In addition, FTA published an incorrect period of availability for the Formula Grants to Rural Areas Program (49 U.S.C. 5311) (*section IV. “Program Specific Information, F - I., 5. Period of Availability”*). The correct period of availability for this program is three years, including the year in which the funds are apportioned. Any FY 2013 apportioned funds that remain unobligated at the close of business on September 30, 2015 will revert to FTA for reapportionment under the Formula Grants to Rural Areas Program.

This period of availability applies to all of the section 5311 formula apportionments (e.g. Rural Technical Assistance Program, Appalachian Development Assistance Program, and Tribal Transit Formula program) that are within the Rural Areas program.

Issued in Washington, DC, this 8th day of May, 2013.

Peter Rogoff
Administrator

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